



GAIL FARBER, Director

## COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331

<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

September 09, 2014

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

31 September 9, 2014

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

**APPROVE OVERPASS AGREEMENT  
WITH BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY FOR  
SLAUSON AVENUE OVER SAN GABRIEL RIVER  
WITHIN THE CITIES OF PICO RIVERA AND SANTA FE SPRINGS AND  
THE UNINCORPORATED COUNTY OF LOS ANGELES  
COMMUNITY OF WEST WHITTIER/LOS NIETOS  
(SUPERVISORIAL DISTRICTS 1 AND 4)  
(3 VOTES)**

### **SUBJECT**

This action is to approve the overpass agreement between the Cities of Pico Rivera and Santa Fe Springs, the County, the Los Angeles County Flood Control District, and the Burlington Northern Santa Fe Railway Company for construction, operation, and maintenance of the Slauson Avenue over San Gabriel River Bridge Seismic Retrofit project within the Cities of Pico Rivera and Santa Fe Springs, the unincorporated County community of West Whittier/Los Nietos, and the jurisdiction of the Los Angeles County Flood Control District.

**IT IS RECOMMENDED THAT THE BOARD ACTING AS THE GOVERNING BODY OF THE COUNTY OF LOS ANGELES AND AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act.

2. Approve and instruct the Chairman of the Board to sign the overpass agreement between the Cities of Pico Rivera and Santa Fe Springs, the County, the Los Angeles County Flood Control District, and Burlington Northern Santa Fe Railway Company for construction, operation, and maintenance of the Slauson Avenue over San Gabriel River Bridge Seismic Retrofit project, Bridge 53-C0084, Project ID RDC0010872.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of the recommended action is to execute the enclosed overpass agreement between the Cities of Pico Rivera and Santa Fe Springs, the County, the District, and the Burlington Northern Santa Fe (BNSF) Railway Company for construction, operation, and maintenance of the Slauson Avenue over San Gabriel River Bridge project. The project consists of bridge seismic retrofit improvements to the existing bridge structure on Slauson Avenue over BNSF Railroad Company's newly widened triple track and the San Gabriel River.

The County and the District will be responsible for construction and maintenance of the bridge structural improvements. Both Cities have transferred jurisdiction to the County. Upon completion of construction and Board acceptance, jurisdiction and maintenance of the portions of the project within the respective jurisdictions of the Cities will be returned to them.

### **Implementation of Strategic Plan Goals**

The Countywide Strategic Plan directs the provisions of Operational Effectiveness/Fiscal Sustainability (Goal 1) and Integrated Service Delivery (Goal 3). The project will enhance traffic flow, increase safety, and improve the community environment thereby improving the quality of life for County residents.

### **FISCAL IMPACT/FINANCING**

There will be no impact to the County General Fund.

There is no cost to the County to enter into this agreement. We will submit the Slauson Avenue over San Gabriel River Bridge project to the Board for approval to advertise the project for construction bids at a later date. The total project cost is estimated to be \$2,100,000. This project is within the Cities and the unincorporated County community of West Whittier/Los Nietos. This project will be administered under the Highway Bridge Program covered by Agreement 76078 with the State of California. Under this program, Federal funds allocated to local agencies are used to finance 88.53 percent of the qualifying project cost. The remaining 11.47 percent of the qualifying project cost will be financed with State Proposition 1B funds.

Funding for this project is included in the Fourth Supervisorial District's Road Construction Program in the Road Fund Fiscal Year 2014-15 Budget.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The agreement has been reviewed and approved, as to form, by both Cities, County Counsel, and BNSF Railway Company.

This bridge was identified and submitted to the California Department of Transportation for seismic upgrades as part of the local bridge seismic safety retrofit program. The bridge is uniquely situated over the San Gabriel River and BNSF Railway Company tracks. The BNSF Railway Company has recently completed construction of a third track under the bridge and performed a seismic retrofit to affected sections of the bridge under the County Department of Public Works' construction inspection supervision. This project will complete the work on the remaining bridge structure and bring the entire bridge to current earthquake design standards.

The agreement addresses the responsibilities of the Cities, the County, the BNSF Railway Company, and the District for the seismic retrofit of the bridge.

### **ENVIRONMENTAL DOCUMENTATION**

The California Environmental Quality Act (CEQA) requires public agency decision makers to document and consider the environmental implications of their actions. The proposed project is categorically exempt from the provisions of CEQA pursuant to Section 15301(c) of the CEQA Guidelines and Class 1(x)11 of the Environmental Reporting Procedures and Guidelines adopted by the Board. These exemptions provide for maintenance or minor alteration of existing public structures involving negligible or no expansion of use and maintenance of bridge structures.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

The recommended action will improve the quality of life for County residents traveling in the Cities and the unincorporated County community of West Whittier/Los Nietos areas through enhanced safety, increased mobility, and improved air quality.

**CONCLUSION**

Please return one adopted copy of this letter and four originals of the overpass agreement to the Department of Public Works, Programs Development Division.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gail Farber".

GAIL FARBER

Director

HF:JTW:pr

Enclosures

c: Chief Executive Office (Rita Robinson)  
County Counsel  
Executive Office

## OVERPASS AGREEMENT

BNSF File No. BF10001714  
Slauson Avenue Overpass  
U.S. D.O.T. No. 027645M  
BNSF San Bernardino Subdivision  
LS 7600  
MP 151.929

This Agreement ("**Agreement**"), is executed to be effective as of this 9th day of September, 2014 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), the City of Pico Rivera, a municipal corporation ("**Pico Rivera**"), the City of Santa Fe Springs, a municipal corporation ("**Santa Fe Springs**"), LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic of the State of California ("**County**"), and the COUNTY OF LOS ANGELES, a political subdivision of the State of California ("**County**").

### RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the County of Los Angeles, State of California;

WHEREAS pursuant to easements acquired by the County of Los Angeles through the deeds for street overpass purposes recorded September 26, 1956, as Document No. 2714, in Book No. 52403, page 426 with Southern Pacific Company and recorded March 17, 1958 as Document No. 3672, in Book No. D45, page 197, with the Atchison, Topeka and Santa Fe Railway Company both of Official Records.

WHEREAS, County desires to seismically retrofit the existing Slauson Avenue Overpass, US DOT No. 027645M, located in the unincorporated County of Los Angeles system of highways; and

WHEREAS, the Slauson Avenue Overpass is jurisdictionally shared between the County (6%), Pico Rivera (62%), and Santa Fe Springs (32%); and

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE I – SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the construction of the proposed seismic retrofit of the existing Slauson Avenue Overpass (hereinafter referred to as the "**Structure**"), more particularly described on the Exhibit A attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation. Additionally, temporary traffic controls during construction must be in compliance with Section 8A-08, "Temporary Traffic Control Zones" of the California Manual on Uniform Traffic Control Devices, U.S. Department of Transportation, Federal Highway Administration.

### ARTICLE II – BNSF CONSTRUCTION OBLIGATIONS

In consideration of the covenants of County set forth herein and the faithful performance thereof, BNSF agrees as follows:

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1. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of County, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Plan review of design plans and Overpass construction and maintenance agreement, currently estimated at ten thousand dollars (\$10,000) at County cost;
- (c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project; and
- (e) Providing a contract project coordinator, at County's expense, to serve as a project manager for the Project;

2. BNSF will do all railroad work set forth in Article II, Section 1 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

3. County agrees to reimburse BNSF for work of an emergency nature caused by County or County's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of County and County agrees to fully reimburse BNSF for all such emergency work.

4. BNSF may charge County for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

5. During the construction of the Project, BNSF will send County progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. County must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send County a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, County must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to County under this section. **For purposes of computing the time limits prescribed by Section 911.2 of the California Government Code for the presentment of a claim against the County the cause of action for failure to reimburse BNSF for the costs of the Railroad work performed by it pursuant to this Agreement shall be deemed to have accrued one hundred and eighty (180) days of the date of the final invoice.**

### **ARTICLE III – COUNTY CONSTRUCTION OBLIGATIONS**

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, County agrees as follows:

1. County must furnish to BNSF plans and specifications for the Project. Four sets of said plans (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, must be submitted to BNSF for approval prior to commencement of any construction. BNSF will give County final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.
2. County must make any required application and obtain all required permits and approvals for the construction of the Project.
3. County must provide for and maintain minimum vertical and horizontal clearances, as required in Exhibit C and as approved by BNSF as part of the plans and specifications for the Project.
4. County must acquire all rights of way necessary for the construction of the Project.
5. County must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/faqs/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.
6. County must construct the Project as shown on the attached Exhibit A and do all work ("County's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. County must furnish all labor, materials, tools and equipment for the performance of County's Work. The principal elements of County's Work are as follows:
  - (a) Construction of the Project;
  - (b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
  - (c) Provide suitable drainage, both temporary and permanent;
  - (d) Provide appropriate pedestrian control during construction;
  - (e) Installation and maintenance of an 8-ft. high fence and/or concrete combination (throw fence) on the outside barrier of the Structure;
  - (f) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
7. County must apply and maintain said D.O.T. Crossing number 027645M and Public Utility Commission Crossing number 002-151.390-A in a conspicuous location on the Structure.

8. County's Work must be performed by County or County's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

9. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the County, County shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. . Prior to performing any future maintenance with its own personnel, County shall: comply with all of BNSF's applicable safety rules and regulations; require any County employee performing maintenance to complete the safety training program at the BNSF's Internet Website "[contractororientation.com](http://contractororientation.com)"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

10. County must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, County must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

11. County or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring, falsework or cribbing used by County's contractor shall comply with the BNSF Bridge Requirements set forth on Exhibit F and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

12. County must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Engineering Representative (909-386-4079), BNSF's Signal Representative (909-386-4053), and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
- (c) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative (909-386-4079) to stop construction at no cost to the County or BNSF until these items are completed.
- (d) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim



or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**

13. County must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III, IV, V, and VI; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 13, all construction work performed hereunder by County for the Project will be pursuant to a contract or contracts to be let by County, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) To facilitate scheduling for the Project, County shall have its contractor give BNSF's representative (909-386-4079) four (4) weeks advance notice of the proposed times and dates for work windows. BNSF and County's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.
- (e) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth on Exhibit F, attached to this Agreement and incorporated herein.

15. County must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, County must notify BNSF's Manager of Public Projects, in writing, of the date on which County and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

16. **TO THE FULLEST EXTENT PERMITTED BY LAW, COUNTY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF COUNTY, ITS CONTRACTORS,**

SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE COUNTY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF COUNTY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) COUNTY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY COUNTY, OR (VII) AN ACT OR OMISSION OF COUNTY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY COUNTY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.

17. County must give BNSF's Manager of Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from County.

#### **ARTICLE IV – JOINT CONSTRUCTION OBLIGATIONS**

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from the BNSF Project Manager.
2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F and the detailed plans and specifications approved by BNSF.
3. County must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.
4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) County (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) County (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project. The work stoppage will continue until all necessary actions are taken by County or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of this Agreement, BNSF may immediately terminate the Agreement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition

to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

John T. Walker  
Assistant Deputy Director  
Attn.: Allan Abramson, Transportation Infrastructure Project Development Section  
Los Angeles County, Department of Public Works  
(626) 458-3950  
aabrams@dpw.lacounty.gov

5. County must supervise and inspect the operations of all County contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by County personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until County corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify County (Larry Halweg, 626-458-3935) for appropriate corrective action.

6. Pursuant to this section and Article II, Section 5 herein, County must reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement.

**In any action brought under this Agreement, the prevailing Party shall be entitled to recover its actual costs and attorneys fees pursuant to California Civil Code Section 1717, as well as other litigation costs, including expert witness fees. The prevailing Party shall also be entitled to recover all actual attorneys fees and litigation costs incurred in connection with the enforcement of a judgment arising from such action or proceeding.**

7. All expenses detailed in statements sent to County pursuant to Article II, Section 5 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 1 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The parties mutually agree that no construction activities for the Project, nor future maintenance of the Structure once completed, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800-832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

9. Subject to the restrictions imposed by Article III, Section 9 above, the construction of the Project will not commence until County gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number BF10001714 and D.O.T. Crossing No. 027645M and must state the time that construction activities will begin.

10. County must provide one set of as built plans (prepared in **English Units**) to BNSF, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the software used for the CAD drawings. The "as built plans" must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.

11. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as

well as the State of California and the Federal Highway Administration, for a period of one (1) year from the date of the final BNSF invoice under this Agreement.

12. In the event construction of the Project does not commence within two (2) years of the Effective Date, the CONSTRUCTION OBLIGATIONS portion of this AGREEMENT (ARTICLES II, III & IV) will become null and void.

## **ARTICLE V – MAINTENANCE**

1.. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF City of Pico Rivera, City of Santa Fe Springs, and County agree to the following terms upon completion of construction of the Project:

- (a) City of Pico Rivera, City of Santa Fe Springs, and County will own and maintain, at their shared cost and expense, the Structure, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement. BNSF may, at its option, perform maintenance on the Structure in order to avoid conflicts with train operations. BNSF will notify City of Pico Rivera, City of Santa Fe Springs, and County prior to performing any such maintenance on the Structure. In the event such maintenance involves emergency repairs, BNSF will notify City of Pico Rivera, City of Santa Fe Springs, and County at its earliest opportunity. City of Pico Rivera, City of Santa Fe Springs, and County must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b).
- (b) City of Pico Rivera, City of Santa Fe Springs, and County must, at agreed shared cost and expense, keep the Structure painted and free from graffiti within their respective jurisdiction.
- (c) City of Pico Rivera, City of Santa Fe Springs, and County must apply and maintain vertical clearance signs which consistently and accurately describe the minimum actual vertical clearance from the bottom of the Structure to the top of any pavement.
- (d) City of Pico Rivera, City of Santa Fe Springs, and County must provide BNSF with any and all necessary permits and maintain roadway traffic controls, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.
- (e) It is expressly understood by City of Pico Rivera, City of Santa Fe Springs, County and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (f) City of Pico Rivera, City of Santa Fe Springs, and County must keep the Structure and surrounding areas clean and free from birds, pigeons, scavengers, vermin, creatures and other animals within their respective jurisdiction.
- (g) If City of Pico Rivera, City of Santa Fe Springs, or County (including their contractors and agents) or BNSF, on behalf of City of Pico Rivera, City of Santa Fe Springs, or County, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then County or its contractors and/or agents must procure and maintain the following insurance coverage:

Railroad Protective Liability insurance naming only **BNSF** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate.

The policy shall be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to **BNSF** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

As used in this paragraph, "**BNSF**" means "Burlington Northern Santa Fe, LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Agency may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy if available to Agency or its contractors. The limits of coverage are the same as above.

2. City of Pico Rivera, City of Santa Fe Springs, and County hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from City of Pico Rivera, City of Santa Fe Springs, or County property to BNSF tracks for maintenance purposes.

3. Subject to the restrictions imposed by Article IV, Section 9 above, City of Pico Rivera, City of Santa Fe Springs, or County must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **INSPECTION OR MAINTENANCE** purposes, and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, County must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. County will be responsible for its contractor(s) compliance with such obligations.

4. BNSF may, at its expense, make future changes or additions to the railroad components of the Structure if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the Structure. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the Structure, will be the sole responsibility of the County.

5. City of Pico Rivera, City of Santa Fe Springs, and County may, at City of Pico Rivera, City of Santa Fe Springs, and County's shared expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction, must receive BNSF's prior written approval as evidenced by either a supplement to this Agreement, or execution of a new agreement that provides for the termination of this Agreement. Furthermore, any alteration or reconstruction of the highway components of the Structure will be covered by a Commission Order.

## **ARTICLE VI – JOINT OBLIGATIONS**

1. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.
2. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.
3. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
4. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and City of Pico Rivera, City of Santa Fe Springs, and County with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.
5. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

**BNSF Railway Company:**

BNSF's Manager of Public Projects  
740 East Carnegie Drive  
San Bernardino, CA 92408

**County:**

John T. Walker, PE  
Assistant Deputy Director  
Los Angeles County  
Department of Public Works  
Programs Development Division  
Attn: Allan Abramson, Transportation  
Infrastructure Project Development Section  
900 S Fremont Avenue, 11<sup>th</sup> floor  
Alhambra, CA 91803-1331

**City of Pico Rivera:**

Arturo Cervantes, PE  
Director of Public Works/City Engineer  
City of Pico Rivera  
6615 Passons Blvd  
Pico Rivera, CA 90660

**City of Santa Fe Springs:**

Noe Negrete, P.E.  
Director of Public Works/City Engineer  
City of Santa Fe Springs  
11710 E. Telegraph Road  
Santa Fe Springs, CA 90670

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_

Printed Name: Melvin Thomas

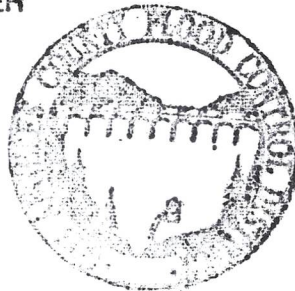
Title: Manager Public Projects

WITNESS:

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

31 SEP 09 2014

Sachi A. Hamai  
SACHI A. HAMAI  
EXECUTIVE OFFICER



WITNESS:

**COUNTY**

**COUNTY OF LOS ANGELES**

By: Don Knabe

Printed Name: Don Knabe

Title: Chairman, Board of Supervisors

**LOS ANGELES COUNTY FLOOD COUNTY DISTRICT**

By: Don Knabe

Chairman, Los Angeles County Flood  
Control District

Printed Name: Don Knabe

Title: Chairman, Board of Supervisors

ATTEST: SACHI A. HAMAI  
Executive Officer  
Clerk of the Board of Supervisors

By: Carla Little  
Deputy



APPROVED AS TO FORM:

JOHN F. KRATTLI  
County Counsel

By: Karla Little  
Deputy

I hereby certify that pursuant to  
Section 25103 of the Government Code,  
delivery of this document has been made.

SACHI A. HAMAI  
Executive Officer  
Clerk of the Board of Supervisors

By: Carla Little  
Deputy

78264

CITY

CITY OF PICO RIVERA

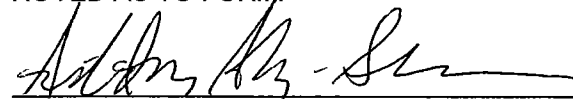
By:  \_\_\_\_\_

PG

Printed Name: Ronald Bates, Ph.D.

Title : City Manager

APPROVED AS TO FORM:

By:  \_\_\_\_\_

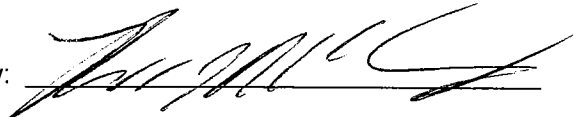
Arnold M. Alvarez-Gasman, City Attorney

WITNESS:

\_\_\_\_\_



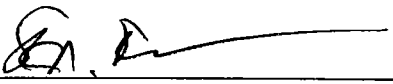
**CITY OF SANTA FE SPRINGS**

By: 

Printed Name: **Thaddeus McCormack**

Title : City Manager

APPROVED AS TO FORM:

By: 

Steven N. Skolnik  
City Attorney

**EXHIBIT A**

**RIGHT OF WAY IDENTIFICATION MAP AND AERIAL IMAGES**

**EXHIBITS A1, A2, A3, A4**

**EXHIBIT B**

**NOT IN AGREEMENT – INTENTIONALLY LEFT BLANK**

**EXHIBIT C**

**FORM 0102 CONTRACTOR REQUIREMENTS, FORM 0107 CONTRACTOR'S RIGHT  
OF ENTRY AGREEMENT, CONTRACTOR INSURANCE REQUIREMENTS,  
CERTIFICATE OF COUNTY SELF\_FUNDING OF INSURANCE OBLIGATION**

**EXHIBITS C, C1, C2, C3**

**EXHIBIT D**

**ENGINEER'S ESTIMATE, FLAGGING ESTIMATE, and INSPECTION ESTIMATE**

**EXHIBITS D1, D2, D3**

**EXHIBIT E**

**PLAN APPROVAL**

**EXHIBIT E**

## **EXHIBIT F**

### **BNSF BRIDGE REQUIREMENTS**

#### **BRIDGE DESIGN, PLANS & SPECIFICATIONS:**

Except for the design of temporary falsework and shoring, BNSF review of the Structure plans will be limited to the vertical and horizontal clearances, sight distance for existing train signals, foundation dimensions and drainage characteristics as they relate to existing and future tracks. BNSF will not review structural design calculations for the permanent Structure unless a member or members are influenced by railroad live loads.

Temporary falsework and shoring plans and calculations must be reviewed and approved by BNSF prior to beginning construction. The County shall perform an independent review of the design calculations for temporary falsework and shoring prior to submitting them to BNSF for approval. Temporary construction clearances must be no less than 15 feet measured horizontally from the centerline of the nearest track and 21 feet-6inches measured vertically from the top of rail of the most elevated track to the bottom of lowest temporary falsework member. State regulatory agencies may have more restrictive requirements for temporary railroad clearances.

For the permanent Structure, the County will submit plans showing the least horizontal distance from the centerline of existing and future tracks to the face of the nearest member of the proposed Structure. The location of the least horizontal distance must be accurately described such that BNSF can determine where it will occur in both the horizontal and vertical plane. If the permanent member is within 25 feet of the nearest track (or future track), collision walls shall be incorporated into the permanent Structure design according to American Railway Engineering and Maintenance Association Manual of Recommended Practice - Chapter 8 - Article 2.1.5.

For the permanent Structure, the County will submit plans showing the least vertical clearance from top of the most elevated rail of existing and future tracks to the lowest point of the proposed Structure. A profile of the existing top of rail elevation shall be plotted on the bridge plans. The profile shall extend for 500 feet in each direction of the proposed overpass and a separate profile shall be plotted for each track. If the existing top of rail profile(s) is not uniform such that a sag exists in the vicinity of the proposed Structure, the permanent Structure vertical clearance shall be increased sufficiently to accommodate a raise in the track profile to remove the sag. Prior to beginning construction of the permanent Structure, the top of rail elevations should be checked and verified that they have not changed from the assumed elevations utilized for the design of the bridge.

Prior to issuing any invitation to bid on construction of the Structure, the County should conduct a pre-bid meeting where prospective Contractors have the opportunity to communicate with BNSF personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and specifications for the Structure must be submitted to BNSF for review and approval prior to letting of bids for the Project.

#### **BRIDGE CONSTRUCTION:**

After awarding the bid, but prior to the Contractor entering BNSF's right-of-way or property, the County should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF may require an independent engineering inspector to be present during certain critical activities of the Project, including but not limited to: driving foundation piles, erecting

falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. The County shall reimburse BNSF for all costs of supplemental inspection services.

Within 90 days of the conclusion of the Project and final acceptance by BNSF, the County will provide BNSF with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station \*.dgn electronic format (preferred) or AutoCAD \*.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. Actual measured "as constructed" clearances shall be shown as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities.

#### **BRIDGE MAINTENANCE:**

The County will be responsible for maintenance and repair of the Structure including the earth retention components, embankment slopes, erosion control, surface drainage, fencing, deck drains, landscaping, paint, walkways, handrails, lighting, and other improvements associated with the Project.

Fencing and other pedestrian access controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the County. Trespasser control shall be the responsibility of the County. Graffiti removal will be the responsibility of the County.

#### **BRIDGE INSPECTION:**

The County will conduct annual routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the County will provide an immediate inspection by qualified personnel and notify BNSF of damage that may affect safe passage of trains. If necessary the County will embargo weights or provide lane closures or other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

#### **BRIDGE ALTERATIONS:**

Except as provided otherwise by this Agreement, there will be no alterations made to the Structure that will alter the railroad vertical or horizontal clearances provided by the original design. Pipelines will be not be added or attached to the Structure without first submitting plans and calculations to BNSF for review and approval.